

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

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MAR 31 1997

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20541

In the Matter of )  
 )  
Closed Captioning and Video )  
Description of Video Programming )  
 )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
 )  
Video Programming Accessibility )

MM Docket No. 95-176

REPLY COMMENTS OF QVC, INC.

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March 31, 1997

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**REPLY COMMENTS OF QVC, INC.**

QVC, Inc. ("QVC"), by its attorneys, hereby files its reply comments on the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.<sup>1</sup>

**I. THE RECORD PROVIDES SUBSTANTIAL SUPPORT FOR A CLASS EXEMPTION FOR HOME SHOPPING SERVICES.**

In its initial comments, QVC demonstrated the following:

- Closed captioning is unnecessary for QVC because the service is already fully accessible to hearing-impaired individuals due to the extensive use of on-screen visual depictions of the products and of text and graphics concerning product price, ordering, and other information.<sup>2</sup>

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<sup>1</sup> In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, FCC 97-4, released January 17, 1997 ("Notice").

<sup>2</sup> QVC also showed that QVC's TDD facility, which is dedicated to serving the hearing-impaired community, as well as QVC's Internet Web service, iQVC, which is fully integrated with the QVC television service, provide still further product, price, and  
(continued ...)

- Consequently, the economic burden of closed captioning QVC's 24-hour live unscripted service (potentially \$3.5 million annually) would far outweigh the benefits for hearing-impaired viewers.<sup>3</sup>
- In fact, closed captioning could actually diminish the QVC viewing experience for hearing-impaired viewers, since the captioning would block critical on-screen product and ordering information or the visual image of the product itself. Moreover, the inaccuracies typical of real-time captioning could mislead hearing-impaired viewers about important aspects of the product and could negatively impact the perceived quality of QVC's products.<sup>4</sup>
- Since all home shopping services share these same fundamental characteristics, the Commission should exempt this class of programming in the order it adopts in this proceeding.<sup>5</sup>

A number of parties submitted additional information supporting QVC's analyses and an exemption for the class of home shopping services. For example, as NIMA International argues:

Television shopping programmers make effective visual presentations of product information ... and their sales revenues similarly depend on ensuring that prospective customers do have all the material information that they need to decide whether or not to make a purchase. The Commission's proposal not to exempt this category of programming from its closed captioning rules seemingly overlooks the primary purpose of television shopping services, and the

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(... continued)

ordering information for QVC's hearing-impaired viewers. See QVC Comments at 13-16.

<sup>3</sup> QVC also demonstrated that the Commission has the legal authority to grant exemptions for individual program services in this proceeding and that it should do so for sound policy reasons. See id. at 4-9.

<sup>4</sup> Id. at 20-23.

<sup>5</sup> Id. at 23-25.

corresponding effect that has on how they present items for sale.<sup>6</sup>

Similarly, the Direct Marketing Association correctly observes:

To gain consumers' trust and confidence, television shopping services must provide comprehensive and accurate product information. Accordingly, they focus on displaying the products so that consumers can see them.

In short, the record demonstrates that home shopping services present in visual form all of the essential product, ordering, and shipping information provided orally by the program host and guest. As QVC and others have pointed out, this makes perfect sense given that the purpose of home shopping services is to present an attractive, easily accessible visual portrayal of the product that will persuade the viewer to buy the product. The success of a home shopping service is critically dependent on how effectively it conveys this visual image. The fundamentally visual nature of home shopping services, in turn, renders a closed captioning requirement unnecessary.

In addition, because home shopping services are by nature intensely visual, the substantial burdens a closed captioning requirement would impose on the programmer (e.g., potentially

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<sup>6</sup> Comments of NIMA International at 7 (emphasis in original).

<sup>7</sup> Comments of Direct Marketing Association at 5. See also Comments of Paxson Communications Corp. at 7 (closed captioning is unnecessary for home shopping services "because all necessary information concerning the product is available graphically on-screen" and because closed captioning "will interfere with information that is already displayed graphically for viewers"); Further Comments of the Association of Local Television Stations, Inc. at 10; Comments of HSN, Inc. at 1-10; Comments of QVC, Inc. at 11-13.

\$3.5 million annually for QVC) far outweigh the minimal (if any) accompanying benefits for hearing-impaired viewers. The balance of interests the Commission is required to undertake in this proceeding clearly favors an exemption for the class of home shopping services. This is especially true given that the overlay of closed captions on the highly visual home shopping screen would obscure critical information, generate inaccuracies, and potentially confuse and frustrate hearing-impaired viewers.

**II. OPPONENTS OF A HOME SHOPPING SERVICE EXEMPTION OFFER LITTLE MORE THAN UNSUBSTANTIATED AND INCORRECT ANALYSES WHICH MISAPPLY CONGRESSIONAL DIRECTIVES.**

Although certain commenters oppose an exemption for home shopping services, each of these commenters presents a flawed analysis. The following four arguments against exempting home shopping services are raised in the comments:

1. Not all descriptive information is available in textual form, and the audio provides descriptions that are important for making wise purchasing decisions;<sup>8</sup>
2. Home shopping services are more like general non-exempt programs than advertising or primarily textual programming;<sup>9</sup>
3. Home shopping services generate a lot of revenue which they should be required to use to fund closed captioning;<sup>10</sup> and

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<sup>8</sup> See Comments of Self Help for Hard of Hearing People, Inc. at 7; Comments of Northern Virginia Resource Center for Deaf and Hard of Hearing Persons at 5; Comments of the Consumer Action Network at 7; Comments of Association of Late-Deafened Adults, Inc. at 5; Comments of the Coalition of Protection and Advocacy Systems at 6.

<sup>9</sup> Comments of Ameritech New Media, Inc. at 17.

<sup>10</sup> See Comments of Kaleidoscope Television at 11; Comments of The National Association of the Deaf at 14-15; Comments of Captivision at 7.

4. The addition of captions to home shopping services would result in enough additional sales to offset the cost of captioning.<sup>11</sup>

These arguments are unavailing for two reasons. First, each assumes (either expressly or implicitly) that a program service must have all of its audio information duplicated in on-screen visuals for the program to be "fully accessible" to the hearing-impaired community. As the record shows, this is simply not true with respect to home shopping services. As Paxson Communications describes it:

Although hosts of infomercials and home shopping programs discuss products and in some instances take calls from viewers, these remarks and interjections by dial-in callers add little if any facts to the information concerning the product. Much of the dialogue restates or emphasizes information already present on the screen, and the remainder of the dialogue primarily consists of banter that is irrelevant to the advertisement of the item.<sup>12</sup>

The question should not be whether the host's oral discussion is 100% reproduced in on-screen text and/or graphics. Rather, it is whether the programming visually conveys the information necessary for a hearing-impaired viewer to fully utilize the service -- in this case, to make the basic buying decision to order the product. Since the record demonstrates that the on-screen visual information used by home shopping services achieves this objective, closed captioning is wholly unnecessary to make these services "fully accessible."

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<sup>11</sup> See Comments of the WGBH Educational Foundation at 11; Comments of Consumer Action Network at 7.

<sup>12</sup> Comments of Paxson Communications Corporation at 8.

Indeed, the Commission has already recognized that where the "principal information" is presented on-screen in textual form, such as in interstitial and promotional advertisements, an exemption from the closed captioning requirements is entirely appropriate.<sup>13</sup> The same rationale supports an exemption for the class of home shopping services.<sup>14</sup>

Second, even assuming arguendo that the audio does provide additional product information, this does not end the inquiry in favor of a closed captioning requirement. Rather, Congress directed the Commission to balance the costs and benefits of captioning when considering exemptions under Section 713(d)(1). Thus, the issue is not solely whether QVC can afford captioning or whether hearing-impaired individuals would prefer it; it is whether the economic burden imposed on a programmer outweighs the

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<sup>13</sup> See Notice at ¶ 79 (tentatively concluding that interstitials and promotional advertisements should be exempt from closed captioning as long as the "basic information" provided by these types of announcements is "displayed in some textual or graphics form in order to provide accessibility to persons with hearing disabilities").

<sup>14</sup> Contrary to the conclusory assertion of Ameritech New Media (at 17), QVC and other home shopping services are not more like "general non-exempt programming" than advertisements or primarily textual programs. As is well-documented in the record, the entire design of home shopping services is focused on one thing -- presenting a complete visual picture of the product in order to persuade consumers to make an immediate purchase, or at least to make interested contact with the seller. Particularly since home shopping services do not generate revenues from advertisers or receive license fee payments from distributors, their very existence depends on how effectively they are able to sell the products they demonstrate. This is why home shopping services are highly visual in nature.

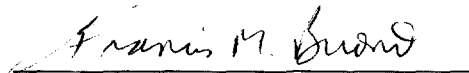
incremental benefits for hearing-impaired viewers.<sup>15</sup> As QVC and other commenters have shown, given that the economic burden to caption home shopping services would be substantial, and the fact that captioning of such highly visual services would provide little, if any, benefit to the hearing-impaired community (and could actually impair the viewing experience), this class of services clearly warrants an exemption under Section 713(d)(1).

#### CONCLUSION

Based on the foregoing reply comments and QVC's initial comments, QVC respectfully urges the Commission to exempt the QVC programming service, as well as all other home shopping services, from the Commission's closed captioning requirements, as part of the order it adopts in this proceeding.

Respectfully submitted,

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<sup>15</sup> See Notice at ¶ 70.